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Colorado General Assembly

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MEMORANDUM

TO: Mike Spalding and Marty Neilson

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: October 12, 2017

SUBJECT: Proposed initiative measure 2017-2018 #61 concerning criminal justice procedures

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado Constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of the Colorado Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

An earlier version of this proposed initiative, proposed initiative 2017-2018 #51, was the subject of a memorandum dated September 13, 2017. Proposed initiative 2017-2018 #51 was discussed at a public meeting on September 20, 2017. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To add a new section to the Colorado Code of Criminal Procedure, articles 1 to 13 of title 16, C.R.S., which addresses a wide variety of criminal procedural subject matter, including but not limited to restitution, rules of criminal procedure, rules of evidence, bail bonding, sentencing, probation and parole, inmate labor, prosecutorial misconduct, and victims' rights;
2. To require the destruction of evidence relating to exonerated or dismissed defendants;
3. To require the state to compensate exonerated defendants;
4. To limit the use of bail bonding for nonviolent offenders;
5. To abolish the use of grand juries;
6. To abolish the practice of plea bargaining;
7. To require the state public defender, upon request, to defend any nonindigent criminal defendant at a maximum billing rate of \$70 per hour;
8. To require the state to provide mental health testing and treatment to inmates who have a history of mental illness, sexual abuse, or alcohol or drug abuse prior to their incarceration, and to deny mental health testing and treatment to inmates who have no such history;
9. To require the state and local governments to vote during the next year in consideration of reducing or repealing criminal laws and procedures;
10. To allow prosecutors to be sued for professional misconduct; and
11. To require the state and local governments to purchase liability insurance to pay for civil damage awards resulting from the misconduct of government employees.

Substantive Comments and Questions

The new proposed initiative measure 2017-2018 #61 raises two new substantive questions:

1. Subsection (6) of the proposed initiative states: "Defendants denied a local jury trial, subpoena power, or use of evidence of innocence shall have all past, present, and future cases dismissed." Do you intend to qualify this provision in any way? For example, do you intend to permit courts to move a defendant's trial to a different judicial district when the court deems such a move necessary for the defendant to receive a fair trial? Also, what do you mean by "future cases [shall be] dismissed"? To what extent do you intend to grant such a defendant immunity from future criminal prosecution?
2. Subsection (6) of the proposed initiative states: "Subpoenas for private records in criminal cases shall require probable cause, specificity, and court consent." Specificity is a relative term. How would a court ensure that such a subpoena is specific enough? On a potential appeal challenging the admissibility of evidence obtained under such a subpoena, how would the appellate court determine whether the subpoena was specific enough?

Technical Comments

The proposed initiative measure 2017-2018 #61 raises no technical comments other than those described in the memorandum dated September 13, 2017, in response to proposed initiative measure 2017-2018 #51 concerning criminal justice procedures.